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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1616

Introduced by Assembly Member Gatto

**(Coauthors: Assembly Members Fletcher, Huffman, Nestande,
V. Manuel Pérez, and Wieckowski)**

(Coauthors: Senators Correa and DeSaulnier)

February 8, 2012

An act to amend Sections 109947, 110460, 111955, 113789, 114021, and 114023 of, to add ~~Section~~ *Sections* 113758 and 114088 to, and to add Chapter 11.5 (commencing with Section 114365) to Part 7 of Division 104 of, the Health and Safety Code, relating to food safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 1616, as amended, Gatto. Food safety: cottage food operations.

Existing law, the Sherman Food, Drug, and Cosmetic Law (Sherman Law), requires the State Department of Public Health to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the Federal Food, Drug, and Cosmetic Act. The Sherman Law makes it unlawful to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded. Food is misbranded if its labeling does not conform to

specified federal labeling requirements regarding nutrition, nutrient content or health claims, and food allergens. Violation of this law is a misdemeanor.

The existing California Retail Food Code provides for the regulation of health and sanitation standards for retail food facilities, as defined, by the State Department of Public Health. Under existing law, local health agencies are primarily responsible for enforcing the California Retail Food Code. That law exempts private homes from the definition of a food facility, and prohibits food stored or prepared in a private home from being used or offered for sale in a food facility. *That law also requires food that is offered for human consumption to be honestly presented, as specified.* A violation of these provisions is a misdemeanor.

This bill would include a cottage food operation, as defined, that is registered or has a permit within the private home exemption of the California Retail Food Code. The bill would also exclude a cottage food operation from specified food processing establishment and Sherman Law requirements. This bill would require a cottage food operation to meet specified requirements relating to training, sanitation, preparation, labeling, and permissible types of sales *and would subject a cottage food operation to inspections under specified circumstances. The bill would require a food facility that serves a cottage food product without packaging or labeling to identify it as homemade.* The bill would establish various zoning and permit requirements relating to cottage food operations.

This bill would incorporate additional changes in Section 113789 of the Health and Safety Code, proposed by AB 2297, to be operative only if AB 2297 and this bill are both chaptered and become effective January 1, 2013, and this bill is chaptered last.

By imposing duties on local officials and adding new crimes, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) Small businesses have played an important role in helping
4 slow economies recover and prosper as an engine of job creation.
5 During the 1990s, small businesses created the majority of new
6 jobs and now account for 65 percent of United States employment.
7 (b) California, and the United States as a whole, are facing
8 growing obesity and obesity-related disease epidemics.
9 (1) Two-thirds of American adults and nearly one-third of
10 children and teens are obese or overweight, placing them at risk
11 for developing chronic diseases such as diabetes, heart disease,
12 and cancer.
13 (2) One in every nine California children, one in three teens,
14 and over half of adults are already overweight or obese. This
15 epidemic affects virtually all Californians.
16 (3) These health conditions are preventable and curable through
17 lifestyle choices that include consumption of healthy fresh foods.
18 (c) For decades, low-income and rural communities have faced
19 limited opportunities to purchase healthy foods. Often, without
20 cars or convenient public transportation options, low-income
21 residents in these areas must rely for much of their shopping on
22 expensive, fatty, processed foods sold at convenience and corner
23 stores.
24 (d) There is a growing movement in California to support
25 community-based food production, sometimes referred to as
26 “cottage food,” “artisanal food,” “slow food,” “locally based food,”
27 or “urban agriculture” movements. These movements seek to
28 connect food to local communities, small businesses, and
29 environmental sustainability.
30 (e) Increased opportunities for entrepreneur development
31 through microenterprises can help to supplement household
32 incomes, prevent poverty and hunger, and strengthen local
33 economies.

1 (f) At least 32 other states have passed laws that allow small
2 business entrepreneurs to use their home kitchens to prepare, for
3 sale, foods that are not potentially hazardous.

4 (g) Even some bake sales are currently illegal in California.

5 (h) It is the intent of the Legislature to enact a homemade food
6 act specifically designed to help address these challenges and
7 opportunities.

8 SEC. 2. Section 109947 of the Health and Safety Code is
9 amended to read:

10 109947. "Food processing facility" means any facility operated
11 for the purposes of manufacturing, packing, or holding processed
12 food. Food processing facility does not include a food facility as
13 defined in Section 113785, a cottage food operation that is
14 registered or has a permit pursuant to Section 114365, or any
15 facility exclusively storing, handling, or processing dried beans.

16 SEC. 3. Section 110460 of the Health and Safety Code is
17 amended to read:

18 110460. No person shall engage in the manufacture, packing,
19 or holding of any processed food in this state unless the person
20 has a valid registration from the department, except those engaged
21 exclusively in the storing, handling, or processing of dried beans.
22 The registration shall be valid for one calendar year from the date
23 of issue, unless it is revoked. The registration shall not be
24 transferable. This section shall not apply to a cottage food operation
25 that is registered or has a permit pursuant to Section 114365.

26 SEC. 4. Section 111955 of the Health and Safety Code is
27 amended to read:

28 111955. "Food processing establishment," as used in this
29 chapter, shall mean any room, building, or place or portion thereof,
30 maintained, used, or operated for the purpose of commercially
31 storing, packaging, making, cooking, mixing, processing, bottling,
32 canning, packing, slaughtering, or otherwise preparing or handling
33 food except restaurants. "Food processing establishment" shall
34 not include a cottage food operation that is registered or has a
35 permit pursuant to Section 114365.

36 SEC. 5. Section 113758 is added to the Health and Safety Code,
37 to read:

38 113758. (a) "Cottage food operation" means an enterprise that
39 has not more than fifty thousand dollars (\$50,000) in gross annual
40 sales and is operated by a cottage food operator and not more than

1 one *full-time equivalent* cottage food employee, not including a
2 family member or household member of the cottage food operator,
3 within the registered or permitted area of a private home where
4 cottage food products are prepared or packaged for direct, indirect,
5 or direct and indirect sale to consumers pursuant to this part. A
6 cottage food operation includes both of the following:

7 (1) A “Class A” cottage food operation, which is a cottage food
8 operation that may engage only in direct sales of cottage food
9 products.

10 (2) A “Class B” cottage food operation, which is a cottage food
11 operation that may engage in both direct sales and indirect sales
12 of cottage food products.

13 (b) For purposes of this section, the following definitions shall
14 apply:

15 (1) “Cottage food employee” means an individual, paid or
16 volunteer, who is involved in the preparation, packaging, handling,
17 and storage of a cottage food product, or otherwise works for the
18 cottage food operation. An employee does not include an
19 immediate family member or household member of the cottage
20 food operator.

21 (2) “Cottage food operator” means an individual who operates
22 a cottage food operation in his or her private home and is the owner
23 of the cottage food operation.

24 (3) “Cottage food products” means not potentially hazardous
25 foods, including foods listed in Section 114365.5, that do not meet
26 the definition of a potentially hazardous food, as defined in Section
27 113871, and that are prepared for sale in the kitchen of a cottage
28 food operation.

29 (4) “Direct sale” means a transaction between a cottage food
30 operation operator and a consumer, where the consumer purchases
31 the cottage food product directly from the cottage food operation.
32 Direct sales include, but are not limited to, transactions at holiday
33 bazaars or other temporary events, such as bake sales or food
34 swaps, transactions at farm stands, certified farmers’ markets, or
35 through community-supported agriculture subscriptions, and
36 transactions occurring in person in the cottage food operation.

37 (5) “Indirect sale” means an interaction between a cottage food
38 operation, a third-party retailer, and a consumer, where the
39 consumer purchases cottage food products made by the cottage
40 food operation from a third-party retailer. Indirect sales include,

1 but are not limited to, sales made to retail shops or to retail food
2 facilities where food may be immediately consumed on the
3 premises.

4 (6) "Private home" means a dwelling, including an apartment
5 or other leased space, where individuals reside.

6 (7) "Registered or permitted area" means the portion of a private
7 home used for the preparation, packaging, storage, or handling of
8 cottage food products and related ingredients or equipment, or
9 both.

10 SEC. 6. Section 113789 of the Health and Safety Code is
11 amended to read:

12 113789. (a) "Food facility" means an operation that stores,
13 prepares, packages, serves, vends, or otherwise provides food for
14 human consumption at the retail level, including, but not limited
15 to, the following:

16 (1) An operation where food is consumed on or off the premises,
17 regardless of whether there is a charge for the food.

18 (2) Any place used in conjunction with the operations described
19 in this subdivision, including, but not limited to, storage facilities
20 for food-related utensils, equipment, and materials.

21 (b) "Food facility" includes permanent and nonpermanent food
22 facilities, including, but not limited to, the following:

23 (1) Public and private school cafeterias.

24 (2) Restricted food service facilities.

25 (3) Licensed health care facilities.

26 (4) Commissaries.

27 (5) Mobile food facilities.

28 (6) Mobile support units.

29 (7) Temporary food facilities.

30 (8) Vending machines.

31 (9) Certified farmers' markets, for purposes of permitting and
32 enforcement pursuant to Section 114370.

33 (10) Farm stands, for purposes of permitting and enforcement
34 pursuant to Section 114375.

35 (c) "Food facility" does not include any of the following:

36 (1) A cooperative arrangement wherein no permanent facilities
37 are used for storing or handling food.

38 (2) A private home, including a cottage food operation that is
39 registered or has a permit pursuant to Section 114365.

1 (3) A church, private club, or other nonprofit association that
2 gives or sells food to its members and guests, and not to the general
3 public, at an event that occurs not more than three days in any
4 90-day period.

5 (4) A for-profit entity that gives or sells food at an event that
6 occurs not more than three days in a 90-day period for the benefit
7 of a nonprofit association, if the for-profit entity receives no
8 monetary benefit, other than that resulting from recognition from
9 participating in an event.

10 (5) Premises set aside for wine tasting, as that term is used in
11 Section 23356.1 of the Business and Professions Code and in the
12 regulations adopted pursuant to that section, that comply with
13 Section 118375, regardless of whether there is a charge for the
14 wine tasting, if no other beverage, except for bottles of wine and
15 prepackaged nonpotentially hazardous beverages, is offered for
16 sale for onsite consumption and no food, except for crackers, is
17 served.

18 (6) Premises operated by a producer, selling or offering for sale
19 only whole produce grown by the producer, or shell eggs, or both,
20 provided the sales are conducted on premises controlled by the
21 producer.

22 (7) A commercial food processing plant as defined in Section
23 111955.

24 (8) A child day care facility, as defined in Section 1596.750.

25 (9) A community care facility, as defined in Section 1502.

26 (10) A residential care facility for the elderly, as defined in
27 Section 1569.2.

28 (11) A residential care facility for the chronically ill, which has
29 the same meaning as a residential care facility, as defined in Section
30 1568.01.

31 (12) Premises set aside by a beer manufacturer, as defined in
32 Section 25000.2 of the Business and Professions Code, that comply
33 with Section 118375, for the purposes of beer tasting, regardless
34 of whether there is a charge for the beer tasting, if no other
35 beverage, except for beer and prepackaged nonpotentially
36 hazardous beverages, is offered for sale for onsite consumption,
37 and no food, except for crackers or pretzels, is served.

38 *SEC. 6.5. Section 113789 of the Health and Safety Code is*
39 *amended to read:*

1 113789. (a) “Food facility” means an operation that stores,
2 prepares, packages, serves, vends, or otherwise provides food for
3 human consumption at the retail level, including, but not limited
4 to, the following:

5 (1) An operation where food is consumed on or off the premises,
6 regardless of whether there is a charge for the food.

7 (2) Any place used in conjunction with the operations described
8 in this subdivision, including, but not limited to, storage facilities
9 for food-related utensils, equipment, and materials.

10 (b) “Food facility” includes permanent and nonpermanent food
11 facilities, including, but not limited to, the following:

12 (1) Public and private school cafeterias.

13 (2) Restricted food service facilities.

14 (3) Licensed health care facilities.

15 (4) Commissaries.

16 (5) Mobile food facilities.

17 (6) Mobile support units.

18 (7) Temporary food facilities.

19 (8) Vending machines.

20 (9) Certified farmers’ markets, for purposes of permitting and
21 enforcement pursuant to Section 114370.

22 (10) Farm stands, for purposes of permitting and enforcement
23 pursuant to Section 114375.

24 (c) “Food facility” does not include any of the following:

25 (1) A cooperative arrangement wherein no permanent facilities
26 are used for storing or handling food.

27 (2) A private home, *including a cottage food operation that is*
28 *registered or has a permit pursuant to Section 114365.*

29 (3) A church, private club, or other nonprofit association that
30 gives or sells food to its members and guests, and not to the general
31 public, at an event that occurs not more than three days in any
32 90-day period.

33 (4) A for-profit entity that gives or sells food at an event that
34 occurs not more than three days in a 90-day period for the benefit
35 of a nonprofit association, if the for-profit entity receives no
36 monetary benefit, other than that resulting from recognition from
37 participating in an event.

38 (5) Premises set aside for wine tasting, as that term is used in
39 Section 23356.1 of the Business and Professions Code and in the
40 regulations adopted pursuant to that section, that comply with

1 Section 118375, regardless of whether there is a charge for the
2 wine tasting, if no other beverage, except for bottles of wine and
3 prepackaged nonpotentially hazardous beverages, is offered for
4 sale for onsite consumption and no food, except for crackers, is
5 served.

6 (6) Premises operated by a producer, selling or offering for sale
7 only whole produce grown by the producer, or shell eggs, or both,
8 provided the sales are conducted on premises controlled by the
9 producer.

10 (7) A commercial food processing plant as defined in Section
11 111955.

12 (8) A child day care facility, as defined in Section 1596.750.

13 (9) A community care facility, as defined in Section 1502.

14 (10) A residential care facility for the elderly, as defined in
15 Section 1569.2.

16 (11) A residential care facility for the chronically ill, which has
17 the same meaning as a residential care facility, as defined in Section
18 1568.01.

19 (12) Premises set aside by a beer manufacturer, as defined in
20 Section 25000.2 of the Business and Professions Code, that comply
21 with Section 118375, for the purposes of beer tasting, regardless
22 of whether there is a charge for the beer tasting, if no other
23 beverage, except for beer and prepackaged nonpotentially
24 hazardous beverages, is offered for sale for onsite consumption,
25 and no food, except for crackers or pretzels, is served.

26 (13) (A) *An intermediate care facility for the developmentally*
27 *disabled, as defined in subdivisions (e), (h), and (m) of Section*
28 *1250, with a capacity of six beds or fewer.*

29 (B) *A facility described in subparagraph (A) shall report any*
30 *foodborne illness or outbreak to the local health department and*
31 *to the State Department of Public Health within 24 hours of the*
32 *illness or outbreak.*

33 SEC. 7. Section 114021 of the Health and Safety Code is
34 amended to read:

35 114021. (a) Food shall be obtained from sources that comply
36 with all applicable laws.

37 (b) Food stored or prepared in a private home shall not be used
38 or offered for sale in a food facility, unless that food is prepared
39 by a cottage food operation that is registered or has a permit
40 pursuant to Section 114365.

SEC. 8. Section 114023 of the Health and Safety Code is amended to read:

114023. Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant, or from a cottage food operation that is registered or has a permit pursuant to Section 114365.

SEC. 9. Section 114088 is added to the Health and Safety Code, to read:

114088. A cottage food product, as defined in Section 113758, that is served by a food facility without packaging or labeling, as described in Section 114365, shall be identified to the consumer as homemade on the menu, menu board, or other location that would reasonably inform a consumer of its homemade status.

~~SEC. 9.~~

SEC. 10. Chapter 11.5 (commencing with Section 114365) is added to Part 7 of Division 104 of the Health and Safety Code, to read:

CHAPTER 11.5. COTTAGE FOOD OPERATIONS

114365. (a) (1) (A) A “Class A” cottage food operation shall not be open for business unless it is registered with the local enforcement agency in a manner that includes a self-certification checklist approved by the local enforcement agency that verifies that the cottage food operation conforms to this chapter, including the following requirements:

(i) No cottage food preparation, packaging, or handling may occur in the home kitchen concurrent with any other domestic activities such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment.

(ii) No infants, small children, or pets may be in the home kitchen during the preparation, packaging, or handling of any cottage food products.

(iii) Only normal, ~~noncommercial~~ types of kitchen equipment and utensils may be used to produce cottage food products.

(iv) All food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any cottage food products shall be washed, rinsed, and sanitized before each use.

1 (v) All food preparation and food and equipment storage areas
2 shall be maintained free of rodents and insects.

3 (vi) *Smoking shall be prohibited in the portion of a private home*
4 *used for the preparation, packaging, storage, or handling of*
5 *cottage food products and related ingredients or equipment, or*
6 *both, while cottage food products are being prepared, packaged,*
7 *stored, or handled.*

8 (B) (i) The department shall post the requirements described
9 in subparagraph (A) on its Internet Web site.

10 (ii) *The local enforcement agency shall issue a registration*
11 *number to a “Class A” cottage food operation that meets the*
12 *requirements of subparagraph (A).*

13 (C) (i) *Except as provided in (ii), a “Class A” cottage food*
14 *operation shall not be subject to initial or routine inspections.*

15 (ii) *For purposes of determining compliance with this chapter,*
16 *a representative of a local enforcement agency may access, for*
17 *inspection purposes, the registered area of a private home where*
18 *a cottage food operation is located only if the representative has,*
19 *on the basis of a consumer complaint, reason to suspect that*
20 *adulterated or otherwise unsafe food has been produced by the*
21 *cottage food operation or that the cottage food operation has*
22 *violated this chapter.*

23 (iii) *An inspection made pursuant to this subparagraph shall*
24 *be made at a reasonable time during regular business hours.*

25 (iv) *If the representative from the local enforcement agency is*
26 *denied access to the registered area where access was sought for*
27 *the purpose of enforcing this chapter, the representative may apply*
28 *to a court of competent jurisdiction for, and the court may issue,*
29 *a search warrant authorizing access to the registered area.*

30 (v) *Access under this subparagraph is limited to the registered*
31 *area and solely for the purpose of enforcing or administering this*
32 *chapter.*

33 ~~(E)~~

34 (vi) A local enforcement agency may seek recovery from a
35 “Class A” cottage food operation of an amount that does not exceed
36 the local enforcement agency’s reasonable costs of inspecting the
37 “Class A” cottage food operation for compliance of this chapter,
38 if the “Class A” cottage food operation is found to be in violation
39 of this chapter.

(2) (A) A “Class B” cottage food operation shall not be open for business unless it obtains a permit from the local enforcement agency in a manner approved by the local enforcement agency to engage in the direct and indirect sale of cottage food products.

(B) (i) A “Class B” cottage food operation shall comply with the requirements described in clauses (i) to ~~(v)~~ (vi), inclusive, of subparagraph (A) of paragraph (1) ~~of subdivision (a)~~.

(ii) *The local enforcement agency shall issue a permit number after an initial inspection has determined that the proposed “Class B” cottage food operation and its method of operation conform to this chapter.*

(C) *Except as provided in this subparagraph, a “Class B” cottage food operation shall not be subject to more than one inspection per year by the local enforcement agency.*

(i) *For purposes of determining compliance with this chapter, a representative of a local enforcement agency, for inspection purposes, may access the permitted area of a private home where a cottage food operation is located only if the representative has, on the basis of a consumer complaint, reason to suspect that adulterated or otherwise unsafe food has been produced by the cottage food operation, or that the cottage food operation has violated this chapter.*

(ii) *An inspection made pursuant to this subparagraph shall be made at a reasonable time and during regular business hours.*

(iii) *If the representative from the local enforcement agency is denied access to the permitted area where access was sought for the purpose of enforcing this chapter, the representative may apply to a court of competent jurisdiction for, and the court may issue, a search warrant authorizing access to the permitted area.*

(iv) *Access under this subparagraph is limited to the permitted area and solely for the purpose of enforcing or administering this chapter.*

~~(E)~~

(D) (i) A “Class B” cottage food operation shall be authorized to ~~sell~~ engage in the indirect sales of cottage food products within the county in which the “Class B” cottage food operation is permitted.

(ii) ~~Counties~~ *A county may agree to allow a “Class B” cottage food operation permitted in another county to engage in the indirect sales of cottage food products which are produced by a*

1 “Class B” cottage food operation that is permitted in another county
2 to be sold in its own *in the* county.

3 ~~(b) (1) A registration or permit shall be issued by the~~
4 ~~enforcement agency when an investigation has determined that~~
5 ~~the proposed cottage food operation and its method of operation~~
6 ~~conform to this chapter.~~

7 ~~(2)~~

8 (b) A registration or permit, once issued, is nontransferable. A
9 registration or permit shall be valid only for the person, location,
10 type of food sales, and distribution activity specified by that
11 registration or permit, and, unless suspended or revoked for cause,
12 for the time period indicated.

13 114365.2. A cottage food operation that is registered or has a
14 permit issued pursuant to Section 114365 shall be considered a
15 restricted food service facility for purposes of, and subject to,
16 Sections 113953.5, 114101, 114130, 114149.1, 114256.1,
17 114259.5, 114268, 114279, 114285, and 114286. A cottage food
18 operation that is registered or has a permit also shall be subject to
19 Sections 113715 and 113980 and to all of the following
20 requirements:

21 (a) A person with a contagious illness shall refrain from work
22 in the registered or permitted area of the cottage food operation.

23 (b) A person involved in the preparation or packaging of cottage
24 food products shall keep his or her hands and exposed portions of
25 his or her arms clean and shall wash his or her hands before any
26 food preparation or packaging activity in a cottage food operation.

27 (c) Water used during the preparation of cottage food products
28 shall meet the potable drinking water standards described in Section
29 113869, except that a cottage food operation shall not be required
30 to have an indirect sewer connection. Water used during the
31 preparation of cottage food products includes both of the following:

32 (1) The washing, sanitizing, and drying of any equipment used
33 in the preparation of a cottage food product.

34 (2) The washing, sanitizing, and drying of hands and arms.

35 (d) A person who prepares or packages cottage food products
36 shall complete a food handler course described in Section 113948.

37 ~~(e) A cottage food operation shall include on its cottage food~~
38 ~~package a statement of disclosure informing the consumer that the~~
39 ~~cottage food product was prepared in a private home and the~~
40 ~~cottage food operation’s registration number or permit number as~~

~~assigned by the local enforcement agency.~~ properly label all cottage food products in compliance with the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343 et seq.). Additionally, to the extent permitted by federal law, the label shall include, but is not limited to, all of the following:

(1) The words “Made in a Home Kitchen” in 12-point type on the cottage food product’s primary display panel.

(2) The name commonly used for the food product or an adequately descriptive name.

(3) The name of the cottage food operation which produced the cottage food product.

(4) The registration or permit number of the “Class A” or “Class B” cottage food operation, respectively, which produced the cottage food product and, in the case of a “Class B” cottage food operation, the name of the county of the local enforcement agency that issued the permit number.

(5) The ingredients of the cottage food product, in descending order of predominance by weight, if the product contains two or more ingredients.

114365.5. (a) The department shall adopt and post on its Internet Web site a list of not potentially hazardous foods and their ethnic variations that are approved for sale by a cottage food operation.

(b) This list of not potentially hazardous foods shall include, but not be limited to, all of the following:

(1) Baked goods without cream, custard, or meat fillings, such as breads, churros, cookies, pastries, and tortillas.

(2) Candy, such as brittle and toffee.

(3) Chocolate-covered nonperishable foods, such as nuts and dried fruit.

(4) Dried fruit.

(5) Dried pasta.

(6) Dry baking mixes.

(7) Fruit pies, fruit empanadas, and fruit tamales.

(8) Granola and other dried cereal.

(9) Herb blends and dried mole paste.

(10) Honey and sweet sorghum syrup.

(11) Jams, jellies, preserves, and fruit butter.

(12) Nut mixes and nut butters.

(13) Popcorn.

1 (14) Rice cakes and rice noodles that comply with the handling
2 and labeling requirements of Sections 111222 and 111223.

3 (15) Vinegar and mustard.

4 (16) Roasted coffee and dried tea.

5 (17) Waffle cones and pizelles.

6 (c) Additions to the list of foods specified in subdivision (b) are
7 subject to approval by the department.

8 114365.7. All of the following shall apply to cottage food
9 operations:

10 (a) A city, county, or city and county shall not prohibit cottage
11 food operations in any residential dwellings, but shall do one of
12 the following:

13 (1) Classify these operations as a permitted use of residential
14 property for zoning purposes.

15 (2) Grant a nondiscretionary permit to use a residence as any
16 cottage food operation that complies with local ordinances
17 prescribing reasonable standards, restrictions, and requirements
18 concerning spacing and concentration, traffic control, parking, and
19 noise control relating to those homes. Any noise standards shall
20 be consistent with local noise ordinances implementing the noise
21 element of the general plan. The permit issued pursuant to this
22 paragraph shall be granted by the zoning administrator, or if there
23 is no zoning administrator, by the person or persons designated
24 by the planning agency to grant these permits, upon the certification
25 without a hearing.

26 (3) Require any cottage food operation to apply for a permit to
27 use a residence for its operation. The zoning administrator, or if
28 there is no zoning administrator, the person or persons designated
29 by the planning agency to handle the use permits, shall review and
30 decide the applications. The use permit shall be granted if the
31 cottage food operation complies with local ordinances, if any,
32 prescribing reasonable standards, restrictions, and requirements
33 concerning the following factors: spacing and concentration, traffic
34 control, parking, and noise control relating to those homes. Any
35 noise standards shall be consistent with local noise ordinances
36 implementing the noise element of the general plan. The local
37 government shall process any required permit as economically as
38 possible. Fees charged for review shall not exceed the costs of the
39 review and permit process. An applicant may request a verification
40 of fees, and the city, county, or city and county shall provide the

1 applicant with a written breakdown within 45 days of the request.
2 The application form for cottage food operation permits shall
3 include a statement of the applicant's right to request the written
4 fee verification.

5 (b) In connection with any action taken pursuant to paragraph
6 (2) or (3) of subdivision (a), a city, county, or city and county shall
7 do all of the following:

8 (1) Upon the request of an applicant, provide a list of the permits
9 and fees that are required by the city, county, or city and county,
10 including information about other permits that may be required
11 by other departments in the city, county, or city and county, or by
12 other public agencies. The city, county, or city and county shall,
13 upon request of any applicant, also provide information about the
14 anticipated length of time for reviewing and processing the permit
15 application.

16 (2) Upon the request of an applicant, provide information on
17 the breakdown of any individual fees charged in connection with
18 the issuance of the permit.

19 (3) If a deposit is required to cover the cost of the permit,
20 provide information to the applicant about the estimated final cost
21 to the applicant of the permit, and procedures for receiving a refund
22 from the portion of the deposit not used.

23 (c) Use of a residence for the purposes of a cottage food
24 operation shall not constitute a change of occupancy for purposes
25 of the State Housing Law (Part 1.5 (commencing with Section
26 17910) of Division 13), or for purposes of local building and fire
27 codes.

28 (d) Cottage food operations shall be considered residences for
29 the purposes of the State Uniform Building Standards Code and
30 local building and fire codes.

31 *SEC. 11. Section 6.5 of this bill incorporates amendments to*
32 *Section 113789 of the Health and Safety Code proposed by both*
33 *this bill and Assembly Bill 2297. It shall only become operative if*
34 *(1) both bills are enacted and become effective on or before*
35 *January 1, 2013, (2) each bill amends Section 113789 of the Health*
36 *and Safety Code, and (3) this bill is enacted after Assembly Bill*
37 *2297, in which case Section 6 of this bill shall not become*
38 *operative.*

~~SEC. 10.~~

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.